

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Procedural Rules Governing)	EB Docket No. 17-245
Formal Complaint Proceedings Delegated to the)	
Enforcement Bureau)	

COMMENTS OF CENTURYLINK

CenturyLink, Inc.¹ (CenturyLink) submits these brief comments in the above-referenced matter to comment on just two aspects of the proposals contained in the Commission’s recent Notice of Proposed Rulemaking (*NPRM*) regarding potential new procedural rules for formal complaint proceedings.²

CenturyLink is wholly supportive of the stated overarching goals of the *NPRM* – to streamline and consolidate the procedural rules governing formal complaints and to “enhance the ability of parties and the Commission to promptly and efficiently address alleged violations of the Act and the Commission’s rules and orders.”³ CenturyLink has first-hand experience with formal and informal complaint procedures (as both complainant and respondent). And, it recognizes the tremendous value to the public interest and to the industry that the Commission’s complaint resolution option delivers. It also has great appreciation, from its own direct experience, for the outstanding professional leadership and staff of the Market Disputes Resolution Division.

¹ This submission is made by and on behalf of CenturyLink, Inc. and its wholly owned subsidiaries.

² *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, EB Docket No. 17-245, Notice of Proposed Rulemaking, FCC 17-115 (rel. Sep. 18, 2017); 82 Fed. Reg. 44755 (Sep. 26, 2017).

³ *Id.* at ¶ 2.

In these comments, CenturyLink offers two suggestions that it believes would enhance the ability of the *NPRM* to accomplish its important goals. First, Paragraph 19 of the *NPRM* asks whether the Commission should adopt shot clocks for any or all of the three types of formal complaint proceedings at issue in this proceeding.⁴ CenturyLink encourages the Commission to adopt a shot clock for Section 208 complaints that is similar to that applicable to forbearance petitions filed under Section 160 of the Act.⁵ Under Section 160, the Commission must rule on a forbearance petition within one year or the petition is deemed granted, though it can extend that period by an additional 90 days if it “finds that an extension is necessary to meet the [regulatory flexibility] requirements of” Section 160(a).⁶ The Commission could adopt a similar shot clock for formal complaints – with the clock triggered by a complaint filing. A new formal complaint shot clock could also be framed with the Enforcement Bureau able to extend the shot clock for an appropriate time period (e.g. 90 days) based on something analogous to the forbearance condition for an extension – for example, permitting extensions where the Enforcement Bureau found it was in the interests of a fair and effective administration of a given matter and where the public interest was otherwise served. But, unlike the forbearance context, CenturyLink is unable to see how the shot clock could or should be framed with specific consequences flowing from the agency’s failure to meet the deadline. Thus, it would simply serve as a valuable case administration tool that would promote work by all the parties involved to resolve complaint proceedings in an expeditious manner. CenturyLink also does not propose that this rule be extended to the other two types of complaints at issue in the *NPRM* (complaints re: pole

⁴ *Id.* at ¶ 19.

⁵ 47 U.S.C. § 160(c).

⁶ *Id.*

attachments under Section 224 or complaints re: disabilities access under Sections 255, 717, and 718) as concerns unique to those proceedings may warrant different timelines.

Second, the *NPRM* appears to both renumber the current Section 208 formal complaint rule regarding damages (from Rule 1.722 to Rule 1.723, as a result of adding a new section 47 C.F.R. § 1.720) *and* change the content of the damages-related procedural rule for Section 208 complaints in a manner that CenturyLink believes is not helpful. Specifically, the new content of the damages-related procedural rule contained in new Rule 1.723 appears to revise the pleading/filing requirements in a manner that would impose new, more onerous damages-related pleading requirements for formal complaint filings. Complaint proceedings are often bifurcated so that the merits are resolved first and a separate proceeding is only conducted later on damages as needed. Current Rule 1.722, in subsection (h), contains specific damages-related pleading/filing requirements but also makes clear that those requirements only apply to a supplemental damages complaint (i.e. not the initial formal complaint filing) in the event either the Commission or a complainant asks that damages be determined in a separate/subsequent proceeding. This enables both the parties to a formal complaint proceeding and the Commission and its staff to focus their efforts and resources on the merits aspects of a case before expending resources related to the damages aspects of case. Since, among other things, depending upon the resolution on the merits, that work may be unnecessary. In CenturyLink's experience, these aspects of the current rules have been extremely valuable in Section 208 formal complaint proceedings and have helped foster the expeditious administration of formal complaint proceedings.

The proposed new Rule 1.723 still appears to allow either the complainant or the Commission to seek to bifurcate a given proceeding and have damages determined in a

separate/subsequent proceeding. But, it also appears to now impose damages-related pleading/filing requirements (similar to those contained in subsection (h) on the initial formal complaint filing) *even* where damages will be left for resolution in a separate/subsequent proceeding.

CenturyLink encourages the Commission to modify the proposed rule as to Section 208 complaints to avoid any change from the current rules and practices that both: (1) permit either complainants or the Commission to seek bifurcation of the damages portion of a Section 208 complaint proceeding; *and* (2) when bifurcation occurs, impose damages-related pleading/filing requirements only on the subsequent damages proceeding. CenturyLink is unable to find an express explanation for this aspect of the new proposed rules in the text of the *NPRM* – and surmises that it results from the proposed goal to create uniform rules as much as possible for each variety of formal complaints. CenturyLink respectfully submits that this type of change in the rules would negatively impact the administration for Section 208 formal complaint proceedings and add unnecessary cost and inefficiency. It encourages the Commission to maintain the current practice and rules for Section 208 complaints, recognizing that this is one area where uniformity may not be a positive change.

Respectfully submitted,

CENTURYLINK

By: /s/ Timothy M. Boucher
Timothy M. Boucher
931 14th St., 12th Floor
Denver, CO 80202
303-992-5751
Timothy.Boucher@CenturyLink.com

Its Attorney

October 26, 2017